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INFO RUEHXR/RWANDA COLLECTIVE PRIORITY  
RUEHGV/USMISSION GENEVA 4259  
RUEHMT/AMCONSUL MONTREAL 0113  
RUCPDOG/DEPT OF COMMERCE WASHDC  
RULSDMK/DOT WASHDC  
RHMCSUU/FAA WASHDC  
RUEAYOK/FAA AERONAUTICAL CENTER OKLAHOMA CITY OK  
RUEAHLG/HOMELAND SECURITY CENTER WASHDC

UNCLAS NAIROBI 004252

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SENSITIVE

DEPT FOR AF/E, AF/RSA, AF/EPS, EB/TPP/MTA, AND EB/TRA/AN  
DEPT ALSO PASS TO DOT FOR CONNIE HUNTER AND KEITH GLATZ  
DEPT ALSO PASS TO USTR FOR BILL JACKSON  
TREASURY FOR VIRGINIA BRANDON  
MONTREAL FOR USICAO  
TSA FOR ROBERT MCLAUGHLIN

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SUBJECT: Open Skies on GOK Agenda for Air Services Negotiations

REF: A)STATE 135337, B)NAIROBI 3667

11. (SBU) Summary: Ministry of Transport officials confirmed Kenya is ready to negotiate an Open Skies Agreement with the U.S. and requests confirmation of the proposed dates so it can complete its internal consultations and provide proposals on the model Open Skies text. Ikiara also suggested Nairobi could copy Dakar's passenger handling procedures to obtain TSA approval and direct flights to the U.S. for Kenya Airways pending achievement of Category One status. This suggests Ministry concern that having only Delta fly the route could generate political objections about lack of reciprocity in the aviation relationship. See para 9 for action request. End Summary.

Kenya Ready to Negotiate Open Skies Agreement

12. (SBU) Econoff met with Ministry of Transport Permanent Secretary Gerishon Ikiara to determine the Government of Kenya's (GOK) agenda for its proposed November 26-28 bilateral air service negotiations in Washington. Ikiara stated that he had met with all the stakeholders, including Kenya Civil Aviation Authority (KCAA), Kenya Airports Authority (KAA), the Attorney General, the Ministry of Foreign Affairs, and Kenya Airways (KQ). He said Kenya is ready to negotiate an Open Skies Agreement to replace the restrictive informal agreement with the U.S. under which Pan Am had been designated to fly the U.S.-Kenya route. He was not pleased that Delta was already marketing its flight before applying to the Ministry for designation and economic permission. However, the Ministry is anxious to ensure Delta is designated and its proposed direct flight via Dakar is approved to begin service in June 2008.

13. (SBU) Ikiara said the Yamoussoukro Declaration was a complication, since Kenya did not want to appear to offer open skies to the U.S. before it opened them to other African countries. The U.S. restriction on foreign ownership of U.S. airlines and the EU's use of an airline's principal base of business as the basis for designation of the airline makes the African Union "nervous" about Open Skies Agreements. He understood Tanzania and Ethiopia have signed Open Skies Agreements, but maintain restrictions on neighboring countries' airlines.

14. (SBU) Kenya also needs to do further analysis on the potential impact of an agreement on Kenyan operators, especially Kenya Airways (KQ). Ikiara expressed concern that U.S. airlines would benefit far more than Kenya through Fifth Freedom rights to serve intermediate and points beyond. Kenya will request transition periods for unspecified provisions of the agreement.

#### December Elections Will Not Affect Negotiations

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15. (SBU) Ikiara claimed the aviation services talks were at the technical level, and would not be affected by the December 27 general election. Progress made or any agreement reached on a technical framework would not be lost if a new government is elected. He would like to initial an agreement and sign an MOU within two months to bring it into operation until a Minister can sign it. This would allow Delta and other airlines to begin service via Dakar. If possible, the Ministry will send its proposal before the talks in Washington. Ikiara and his staff would probably lead the delegation to the November talks. KCAA Director General Chris Kuto and KAA Managing Director George Muhoho would attend or send their deputies. KQ will send a representative and perhaps a lawyer, as would the Attorney General. PS Ikiara and KAA George Muhoho are the only political appointees involved. Muhoho's term has two more years to run, and the KCAA Board has not yet decided whether to support an extension of the mandatory retirement age for Director General Kuto.

#### Kenya Airways Interested in U.S. Service,

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16. (SBU) Ikiara stated that KQ wants to offer direct U.S. service as part of the Sky Team, and that he hoped Northwest and perhaps Virgin would also be interested in Kenya-U.S. flights, presumably via West Africa.

#### But Kenya Needs to Achieve Category One

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17. (SBU) Ikiara welcomed DOT's willingness to come to Kenya December 5-7 to discuss Kenya's efforts towards Category One status, noting that President Kibaki has expressed his interest. Ikiara stated KCAA needs to improve its capacity to achieve Category 1 status. The low salaries make it difficult to recruit and retain staff, so KCAA is seeking permission from the Public Services Commission to offer higher salaries. KCAA is advertising the positions to applicants, and may offer them contracts, if necessary, to obtain more flexibility on compensation.

18. (SBU) Ikiara said that Jomo Kenyatta International Airport (JKIA) was considering using the new apron parking for Delta's flights and shuttle buses to move passengers between the aircraft and terminal. He claimed that TSA had approved such a system in Dakar for direct flights to the U.S., and asked if JKIA could use the same procedure for KQ to meet the requirement to separate incoming and outgoing passengers and enable direct flights. Econoff agreed to forward the idea to the TSA representative at Post for review and forwarding to TSA.

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#### Action Request

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19. (SBU) Action request: PS Ikiara asked the USG to confirm its acceptance of the proposed negotiating dates ASAP. He also asked the USG to provide definitions of the concepts of "operational flexibility" and "change of gate," before the negotiations begin. He would also appreciate any explanation of how intermodal transportation could be practical in Kenya. Post would appreciate TSA's reaction to Ikiara's suggestion that JKIA could qualify for

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TSA-approval for direct flights to the U.S. simply by separating

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incoming and outgoing passengers with shuttle buses. KQ may not have the equipment and crew to service U.S. flights, but KQ is aware it could wet lease a U.S. aircraft and crew.

Analysis and Comment

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¶10. (SBU) Delta's proposed flight has focused Kenyan attention on the need for a bilateral air services agreement and to accelerate progress towards Category 1 status. Ikiara's claim that an Open Skies Agreement is too technical to become a political issue is too optimistic. Any issue can and will be politicized, but he is hedging his bets by seeking an initialed agreement and signed MOU in less than two months. His question in para 8 about a means by which KQ could fly directly to the U.S. before achieving Category One suggests he anticipates objections about the apparent lack of reciprocity in the aviation relationship. The political optic of having only a U.S. carrier fly the route until Kenya achieves Category One could make it difficult for the GOK to sign the Agreement. The Ministry and the aviation sector are aware of the differences between Category 1, TSA approval such as the one in Dakar, and an Open Skies Agreement, but the public and politicians would not be interested and could protest. This may be the basis for any Kenyan requests for transition periods within the Agreement. The economic benefits to Kenya of direct U.S.-Kenya flights are generally understood by the GOK, exporters and the tourism industry. If all aviation sector stakeholders agree they want an Open Skies Agreement, it is likely to go forward under either Kibaki or Odinga.

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